IN THE HIGH COURT OF CHHATTISGARH JUDICATURE:BILASPUR

W.P. No. 1162/2003.

PETITIONER : Rohit Singh, aged 55 years
S/o Madhuwa Singh, Pump Operator
Jonk Nahar, Sub Division No.2
Irrigation Department, Pauni,
Tahsil Bilaigarh, Distt. Raipur
(C.G.).

V E R S U S

RESPONDENT (1) State of Chhattisgarh
Through : The Secretary,
Irrigation Department,
D.K.S. Bhawan, Raipur (C.G.)

(2) Sub Divisional Officer,
Jonk Nahar, Sub Division No.2
Pauni, Tah. Bilaigarh,
Distt. Raipur (C.G.)

(3) Executive Engineer,
Jonk Nahar, Water Resources
Divisional Office, Kasdol
Tah. Kasdol, Distt. Raipur (C.G.)

P. R. No. 5/2003
Presented by Shri G.S. Agrawal
dated 06.03.03

शपथ आयुक्त
एस.के. शुक्ला
बिलासपुर (छ.ग.)
बिलासपुर तहसील केन्द्र

RECEIVED COPY.
6/3/03
TO A.G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN FORM OF MANDAMUS OR ANY OTHER FORM APPROPRIATE TO THE FACTS AND CIRCUMSTANCES OF THE CASE OR DIRECTION OR ANY OTHER ORDER :

APR

(94)

HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 1162 OF 2003

Rohit Singh

Vs.

State of Chhattisgarh and others.

O R D E R

Post for 25 **.07.2005**

Sd/-
Sunil Kumar Sinha
Judge

Noted
25/7/05

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HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 1162 OF 2003

Rohit Singh

Vs.

State of Chhattisgarh and others.

Shri H.B. Agrawal, Sr. Advocate with Sushri Shipra Biswas, counsel for the petitioner.

Shri Pankaj Shrivastava, Panel Lawyer for the State/respondents.

ORDER
(25-07-2005)

SUNIL KUMAR SINHA, J,

(1) This petition has been filed under Article 226/227 of the Constitution of India for correcting the date of birth of the petitioner in his service book as 27.11.1948 in place of 23.11.1942 and for directing his reinstatement to the post of Pump Operator from which he has been retired on 30.11.2002 on the basis of attaining the age of superannuation of 60 years calculating from 23.11.1942.

(2) The case of the petitioner is that while he was working on the post of Pump Operator, he came to know in the month of December, 2000 that he is going to retire very soon and he would be retired by the month of November, 2002. On his enquiry, he came to know that his date of birth recorded in the service book is 23.11.1942 instead of 27.11.1948 and therefore, the said retirement is to be effected. After getting this information, he immediately wrote a letter to the respondents but he did not get any reply from them. Thereafter, the petitioner served a notice on 23.3.2001 (Annxure-P/2) by Registered Post to the respondents and sought for correction.

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Even after that no correction was made and ultimately he retired on 30.11.2002.

(3) In the writ petition, the petitioner has annexed a copy of birth certificate (Annexure-P/4) issued by the Director Economic and Statistic Department, Madhya Pradesh issued on 30.11.2001 after registration on 28.11.2001. He has also annexed a copy of relevant page of admission register of the School and copy of transfer certificate issued from Government School, Kawardh, District- Rajnandgaon (Annexure-P/5) and a copy of certificate issued from Municipal School showing that the petitioner is leaving the School after passing class 6th. In all these documents the date of birth of the petitioner is mentioned as 27.11.1948.

(4) Learned counsel for the petitioner submits that earlier to this petition, the petitioner had filed an original application before the State Administrative Tribunal, Jabalpur, Bech at Raipur vide O.A. No. 1410/2001 for almost the similar reliefs but there was no presiding officer or the member in the said bench of the Tribunal and the matters were unnecessarily lingered on, therefore, the petitioner was constrained to file this writ petition before this Court. He also submits that ultimately, the Tribunal has been abolished and the matters are being transferred to the High Court and the said original application shall be withdrawn at the appropriate stage.

(5) The return has been filed on behalf of the State/respondents.

(6) It has been submitted by the State that the petitioner made an application for correcting his date of birth at the fag end of his services when he became due for retirement. It is also submitted that the date of birth mentioned in the service book of the petitioner is 23.11.1942 which is on the basis of declaration of the petitioner himself at the time of entry in service. Not only this, a declaration form in relation to the

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personal description, which was required to be filed in pursuance of the circular of the State Government bearing No. 351 C.R. 23-41 1/3/7 dated 05.07.1971, was also filled by the petitioner which bears his own signature, in which also the petitioner has mentioned his date of birth as 23.11.1942. This document bears the Photograph of the petitioner and has been filed as Annexure-R/1. A copy of relevant page of service book has also been filed as Annexure-R/2 in which the date of birth mentioned is 23.11.1942 which bears finger prints of the petitioner according to the rules along with his five specimen signatures in the relevant column.

(7) The rejoinder to this return has been filed by the petitioner on 17.09.2004 in which the petitioner has stated that in fact, his signatures were obtained in the blank declaration form and all the details mentioned therein have been filled up by the department and not by the petitioner. It is also stated that the petitioner was not supplied the copy of the service book, therefore, he was not aware about the date of his birth recorded in it and the mistake continued until the petitioner came to know about it.

(8) Learned counsel for the petitioner submits that after knowing about the wrong entry in the service record, the petitioner has submitted an application before the Sub-Divisional Officer on 10.12.2001 vide Annexure-P/9 along with all his certificates referred to above. He refers to the document Annexure-P/10 which is a memo dated 21.11.2002 written by the Superintending Engineer (Admn.) to the Secretary, Water Resources Department in which it has been stated that the date of birth of the petitioner in the service record has been mentioned as 23.11.1942 where as according to the certificates produced before the department, his date of birth appears to be 27.11.1948. These documents were examined by the office of Superintending Engineer and were found to be correct. After writing this, the Superintending Engineer had requested for taking an early decision in the case of the petitioner referring

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that taking the date of birth as 23.11.1942, the petitioner has to retire on 30.11.2002.

(9) Learned counsel for the petitioner further submits that after perusal of this memo dated 21.11.2002, it would appear that the concerned Superintending Engineer was fully satisfied with the documents filed by the petitioner before him that the date of birth of the petitioner is 27.11.1948 and there was delay on the part of the Executive Engineer by not sending the matter to the Government for consideration in time.

(10) I have heard learned counsel for the petitioner as well as counsel for the State at length and have also perused the records produced by the respective parties.

(11) It has been held by the Apex Court in the matter of **UNION OF INDIA –V- HARNAM SINGH, (1993) 2 SCC 162** that 'it is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless

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altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. A public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him'.

(12) It has further been held by the Apex Court in the matter of **STATE OF PUNJAB AND OTHERS –V- S.C. CHADHA**, reported in **(2004) 3 SCC 394** that 'an application for correction of the date of birth should not be dealt with by the courts, tribunal or the High Court keeping in view only the public servant concerned. Unless a clear case on the basis of clinching materials, which can be held to be conclusive in nature, is made out by the employee and that too within a reasonable time as provided in the rules governing the service, the court or the tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service-book.

(13) The very purpose of recording the date of birth of a government servant in his service-book is to fix a particular date of his retirement under the conditions of service or the

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rules regulating condition of service. A government servant cannot be retired nor his service can be dispensed with in usual conditions unless he attains the age of superannuation on the basis of the entry of date of birth in his service records. If a wrong entry is made in the service record of a government servant, then it could not be said that the same cannot be corrected at all. The government servant has a right to make a request for its correction when such an exigency arises in his service. This right of correction of date of birth may be availed under the statutory rules and if the rules are there, the procedure laid down under the rules including the period of limitation etc., must be followed. During the course of the arguments, this Court specifically asked the Panel Lawyer appearing for the State as to whether any such rules for correction of date of birth in the service record are prevailing in the State of Chhattisgarh. Panel Lawyer made this statement that no such rules are prevailing here. Therefore, when the rules in this regard have not been framed, the matter has to be dealt with in a general manner and no time limit could be fixed for making an exercise by the government servant for correction of his date of birth. However, on the basis of ratio of the judgments rendered by the Apex Court in above two matters, it would appear that the application for correction of date of birth must be made within a reasonable period. What should be the reasonable period is to be determined on the facts and circumstances of a particular case. There may be the cases in which the fact about the wrong entry of date of birth may not be in the knowledge of the employee upto a very long period, but it may come in his knowledge at the fag end of his service and in some cases, though knowledge to the government servant may be there but he may not have taken steps for its correction for a very long period. Therefore, the arguments advanced by the learned counsel for the State that the petitioner made a request for correction of his date of birth at the fag end of his service and on this ground only his claim was rightly not entertained by the State could not be accepted.

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First of all, we shall determine as to when the petitioner came to know about wrong entry made in his service records. If we examine the records of the case, it would appear that the petitioner has made this pleading that he was not having any knowledge about declaration form filled in his case. He submitted that though the declaration form bears his signatures but the signatures have been obtained in blank form (Annexure-R/1) and the entries were made on some later dates. It is also submitted that the entries are not in the hand writing of the petitioner. It is also stated that the copy of service-book had never been supplied to the petitioner, therefore, the petitioner could not come to know about the wrong date of birth mentioned in both these documents i.e. Annexures-R/1 & R/2. When he could come to know about these entries in the year 2000, then only, he made an application for correction of date of birth to his concerned authority along with all his documents which were ultimately forwarded by the Superintending Engineer vide his memo dated 21-11-2002 Annexure-P/10. All these facts and documents go to show that the knowledge about the entry of wrong date of birth was gathered by the petitioner in December 2000 only.

(14) Annexure-P/10 is reproduced as under:

"कमांक–3316108/छ0ग0/2001
कार्यालय प्रमुख अभियन्ता
जल संसाधन विभाग
रायपुर.

छत्तीसगढ़, रायपुर
दिनांक 21/11/2002

प्रति,

सचिव,
छत्तीसगढ़ शासन
जल संसाधन विभाग
मंत्रालय, रायपुर.

विषयः– श्री राहित सिंह पंपचालक के सेवा पुस्तिका में जन्मतिथि बदलने एवं नामांकन बदलने बाबत् ।

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संदर्भः— म0अ0 महानदी गोदावरी कछार रायपुर के पत्र कमांक 636/एम./स्था. (सा)/म.गो.क./2001 दिनांक 21/11/02 ।

विषयांतर्गत, संदर्भित पत्र कमांक 636/एम./स्था. (सा)/म.गो.क. /2001 दिनांक 21/11/2002 की छाया प्रति सहपत्रों की प्रति सहित संलग्न है ।

श्री रोहित सिंह पंप चालक (का.स्था.) की सेवा पुस्तिका के अनुसार प्रथम बार अंकित जन्मतिथि 23/11/1942 है । जन्म प्रमाण पत्र एवं शाला स्थानान्तरण प्रमाण पत्र के अनुसार इनकी जन्मतिथि 27/11/1948 अंकित है । जिसे इस कार्यालय द्वारा मूल प्रमाण पत्र का अवलोकन किया गया है एवं यह सही पाया गया है इस महत्वपूर्ण प्रकरण में संबंधित कार्यपालन यंत्री द्वारा समय रहते वांछित कार्यवाही नहीं की गई ऐसा प्रतीत होता है ।

अतः अल्प समय को दृष्टि में रखते हुए कृपया प्रकरण पर अविलंब कार्यवाही हेतु अनुरोध है, क्योंकि कर्मचारी की सेवा पुस्तिका में अंकित जन्मतिथि के आधार पर दिनांक 30/11/2002 को सेवानिवृत्त कर दिया जावेगा ।

सहपत्रः— उपरोक्तानुसार ।

अधीक्षण यंत्री (प्रशा0)
कार्यालय प्रमुख अभियन्ता
जल संसाधन विभाग, रायपुर
छत्तीसगढ़"

30.11.02 को
सेवा निवृत्ति तिथि
को देखते हुए तत्काल
निर्णय लेवें ।

The words written in this document by the Superintending Engineer as "जन्मतिथि 27/11/1948 अंकित है । जिसे इस कार्यालय द्वारा मूल प्रमाण पत्र का अवलोकन किया गया है एवं यह सही पाया गया है" goes to show that the entry in relation to the date of birth in the certificates were found to be correct at least to the satisfaction of the Superintending Engineer and then only the matter was forwarded to the concerned Secretary of the Government.

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(15) If we examine the document Annexure-P/5, which is the transfer certificate of Government Higher Secondary School, Kawardha, District: Rajnandgaon which appears to be issued on 27-2-1998, then it would be clear that the petitioner was admitted in class-6th in the said institution on 2-7-1962 and studied there up to 15-12-1963 and thereafter he left his institution on 16-12-1963. His date of birth in this certificate has been mentioned as 27-11-1948. Likewise, the document Annexure-P/6 is transfer certificate issued by the Headmaster of the School after passing class-5th. This certificate was issued on 30-4-1962 in which it has been shown that the petitioner studied in Primary School, Kawardha from 1-7-1958 to 30-4-1962. In this certificate also the date of birth of the petitioner is shown as 27-11-1948. Copy of admission register of the Govt. Higher Secondary School has also been filed in which the name of the petitioner is shown at S. No. 2341. In this register also the date of birth of the petitioner has been shown as 27-11-1948. The petitioner has been shown to be admitted in class-6th. Copy of admission register, transfer certificate Anenxure-P/5 and also transfer certificate Annexure-P/6 dated 30-4-1962 apparently co-relate with each other and they all go to show that so far as the educational records are concerned, the date of birth of the petitioner in those records has been mentioned as 27-11-1948. These are the statutory documents and prima facie there appears to be no dispute about that.

(16) If the petitioner had filed all these documents along with the application before the local authority and the local authority has also taken a view that the documents were seen and found to be correct vide Annexure-P/10 dated 21-11-2002 and the matter was forwarded to the State Govt., then the State Govt. was under obligation to decide the case of the petitioner by passing an order on his application which was duly forwarded to it under memo dated 21-11-2002.

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(17) The petitioner is said to be class-6th passed. The documents filed by him, particularly, the certificates in relation to his educational institutions are old documents and they may amount to irrefutable proof and clinching evidence relating to his date of birth. But all the efforts made by the petitioner remained unattended, when the State did not decide his claim forwarded by the Superintending Engineer vide Annexure-P/10 on 21-11-2002 and his retirement was effected by keeping the claim in abeyance.

(18) The Govt. servant may or may not be entitled for the relief(s) claimed by him, but he is always entitled for a reasonable consideration of his claim made for fulfillment of his relief(s). If any statutory provisions are made by Legislature or the directions are issued by the State for consideration of a particular claim, then they are to be applied by the authorities of the State, while dealing with the matter, but where no such legislation has been brought and no such directions or policy has been issued by the State, then right of consideration shall be governed by the general principles.

(19) I have already cleared that the State has not framed any rules and no directions/circulars/Policy regarding decision on the dispute of date of birth has been brought to the notice of this Court, therefore, in the facts and circumstances of this particular case where the educational records of the petitioner show that his date of birth recorded therein is 27-11-1948 and knowledge about wrong entry appears to be received by the petitioner in the month of December 2000, I deem it proper that the State Government must take a decision on the claims made by the petitioner and forwarded by the Superintending Engineer to it.

(20) It is hereby directed that the concerned Secretary of the State Government shall take a decision on the case of the petitioner forwarded to it by the Superintending Engineer on 21-11-2002 (Annexure-P/10) by considering the documentary

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evidence produced by the petitioner in form of his school leaving certificates and copy of admission register of the school. The Secretary shall be free to make an enquiry in relation to the correctness of the contents of these documents. A reasoned order shall be passed by the Secretary in light of the observations made by this Court. However, since the petitioner has already been retired on 30-11-2002, this entire exercise shall be completed within a period of 3 months from today.

(21) In the result, the writ petition is allowed to the extent indicated above. There shall be no order as to the costs.

Sd/-
Sunil Kumar Sinha
Judge

Vatti